

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MOSHE LEFKOWITZ,

Plaintiff,

-against-

WALTER REISSMAN, MARKETWISE  
TRADING, INC., BLACKRIVER  
PETROLEUM, LLC, SADDLE RIVER  
CAPITAL CORP., DOES 1-10 and  
CORPORATE DOES 1-10,

Defendants.  
-----X

STATE OF NEW YORK     )  
                                  : ss.:  
COUNTY OF NEW YORK    )

LEONARD S. REISS, being duly sworn, deposes and says:

1. I am a member of the firm of Toback, Bernstein & Reiss LLP ("TBR"), attorneys of record for defendants in this action. I submit this Affidavit in support of our application, made pursuant to Local Rule 1.4, to be relieved as counsel for defendants.

2. The basis of this application are irreconcilable conflicts that have arisen between the defendants and our law firm which have impaired our ability to represent the defendants in this action.

3. More Specifically, the defendants have failed to communicate with our law firm, despite many repeated efforts to reach the defendants by telephone and e-mail. Based upon the "failed communications" with our clients, will not be able to meet the obligations required of us in this litigation.

4. The last date on which I was able to communicate with the defendants was February 27, 2013, the date on which the Stipulation and Order Extending the Plaintiff's Time to Amend the Complaint, Extending Defendants' Time to Respond to the Complaint and Extending Time to Submit Joint Scheduling Order (the "Stipulation and Order") was executed. A copy of this Stipulation and Order is annexed hereto as Exhibit "A". In accordance with the Stipulation and Order, the plaintiff filed an Amended Complaint on April 18, 2013 and defendant's time to file an answer or motion to dismiss is currently extended through and including June 3, 2013.

5. After the execution of the Stipulation and Order on February 27, 2013, I have been unable to contact the defendants despite numerous attempts by both telephone and e-mail. Prior to that date, I would usually receive a response to an e-mail or telephone call within twenty-four (24) hours. For inexplicable reasons, defendants have completely failed to respond to any of my numerous attempts to communicate with them during the last two (2) months rendering it impossible for me to effectively represent them in this action. In addition, defendants have failed to provide me with many documents which I have requested in order to properly defend this action on their behalf.

6. The attorney client relationship between the defendants and our firm has become so damaged that we can no longer represent the defendants.

7. There has been no discovery taken in this matter and the action is not on the trial calendar. By making this motion at this time, we are giving defendants sufficient time to retain new counsel before discovery begins or a dispositive motion with respect to the Amended Complaint is filed.

8. I have advised defendants of our intention to file this motion to withdraw and have received no objection (or any other response) from them. A copy of our motion is being served upon defendants both by mail and e-mail.

9. TBR is asserting a charging lien for the amount of any unpaid invoices in this matter.

10. No prior application for the relief being sought herein has been previously made.

**WHEREFORE**, I respectfully request that the motion be granted in its entirety permitting this law firm to withdraw as counsel for the defendants and the Court grant such and further relief as the Court deems appropriate.



Leonard S. Reiss

Sworn to before me this  
26<sup>th</sup> day of April 2013

  
Notary Public

**BRIAN K. BERNSTEIN**  
Notary Public State of New York  
No. 31-4755434  
Qualified in New York County  
Commission Expires February 28, 2014